UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 2 8 1999

Ms. Julie Wanslow
Environment Department
State of New Mexico
2044 Galisteo Street
Santa Fe, New Mexico 87505

Dear Ms. Wanslow,

Thank you for your letter of March 18, 1999, in which you request clarification of certain provisions of the October 22, 1998 final Post-Closure rule (see 63 FR 56710). Specifically, you asked whether EPA intended the final rule to allow the implementing agency (EPA or the authorized State) to have discretion to eliminate or not require groundwater monitoring for regulated units closed under an alternate authority, rather than under closure authority.

In promulgating the final Post-Closure rule, EPA sought to expand the options available to regulators addressing RCRA facilities, while maintaining protection of human health and the environment at those sites. As your letter pointed out, one of the areas where the rule increased regulatory flexibility was in addressing closure and groundwater monitoring at certain regulated units. Prior to the final Post-Closure rule, where a regulated unit was situated among non-regulated solid waste management units, two sets of requirements arguably applied – the regulated units were subject to the closure and groundwater monitoring and remediation requirements of 40 CFR Parts 264 and 265, and the solid waste management units were subject to the more flexible corrective action requirements of Part 264.101. To allow regulators to address these situations using one regulatory scheme, the final Post-Closure rule provided discretion to replace the closure and groundwater requirements of Parts 264 and 265 at the regulated unit with site-specific requirements set out in a permit or other enforceable document.

While the final Post-Closure rule expanded flexibility for regulators addressing regulated units, the rule did not modify existing requirements or impose additional requirements for groundwater monitoring under corrective action or alternate State authorities. As your letter

Faxback 14510

correctly pointed out, this rule did not establish additional performance standards for the design and construction of groundwater monitoring systems. Thus, in situations where the corrective action authority (or under an alternate State authority) allows a remedy that includes groundwater monitoring different from that required under Part 264 or 265, or includes alternative monitoring approaches, such as vadose zone monitoring, that remedy can be applied to a regulated unit under the conditions set forth in the rule (see sections 264.90(f) and 265.90(d)).

It should be noted, however, that the flexibility provided by the final Post-Closure rule to address regulated units through corrective action is limited -- it is only available to regulators in situations where: (1) the regulated unit is situated among solid waste management units (or areas of concern), (2) a release has occurred, and (3) both the regulated unit and one or more solid waste management units are likely to have contributed to the release. In addition, in replacing the Part 264 or Part 265 standards, the rule requires the regulator to make a determination that the alternative corrective action requirements developed for the unit will be protective of human health and the environment. Finally, the remedy must meet the requirements of 40 CRF 264.101(a). A remedy that includes groundwater monitoring different from that required under Part 264 or 265, or one that alternative monitoring approaches, such as vadose zone monitoring, must meet all of these rigorous requirements before it can replace the requirements of Part 264 and 265 at a regulated unit.

I hope the information provided above answers your questions. If you need further information, please contact Barbara Foster in the Corrective Action Programs Branch at 703-308-7057.

Sincerely,

Elizabeth A. Cotsworth
Acting Director
Office of Solid Waste

cc: Stephen Gilrein, EPA Region VI